No. 11,925

IN THE

United States Court of Appeals

For the Ninth Circuit

MATSON NAVIGATION COMPANY (a corporation),
Appellant,

vs.

WAR DAMAGE CORPORATION (a corporation),
Appellee.

BRIEF FOR APPELLEE.

IRA S. LILLICK,
ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON, ADAMS & CHARLES,
311 California Street, San Francisco 4, California,
Attorneys for Appellee,
War Damage Corporation.

BARNARD-WALSH PRINTING CO., SAN FRANCISCO

Table of Contents

Table of Authorities Cited

Texts

Statutes

Miscellaneous

No. 11,925

IN THE

United States Court of Appeals

For the Ninth Circuit

MATSON NAVIGATION COMPANY (a corporation),
Appellant,

vs.

WAR DAMAGE CORPORATION (a corporation),
Appellee.

BRIEF FOR APPELLEE.

STATEMENT.

Matson Navigation Company appeals from the holding of the United States District Court denying recovery from War Damage Corporation, a government agency, for its loss of the Steamship LAHAINA, sunk by enemy action while on a voyage from the Hawaiian Islands to the United States, December 11, 1941.

The statute upon which appellant bases its claim is Section 5-g of the Reconstruction Finance Corporation Act as added March 27, 1942, 56 *Statutes at Large* 175, 46 U. S. C. A. 606 b-2.[1] A full understanding of this statute requires consideration of its historical background, in-

[1]The District Court in its opinion referred to the U. S. C. A. citation. The complete text of this statute is printed in Appendix A for convenient reference.

cluding the comprehensive governmental program of war insurance. In World War I, the United States had adopted a program for insuring the lives of the men engaged in the war and, in addition, made provision for supplementing commercial underwriting of war risk insurance on cargoes and ships. Because of our geographic location, attack against this country was not anticipated in World War I, and governmental insurance did not extend to coverage for damage to property in the United States.

The need for these same types of insurance with respect to World War II was realized at an early date. In 1936, insuring powers were granted to the Maritime Commission for certain marine coverage.[2] These powers were extended in 1940,[3] and a bill to further extend the Maritime Commission's insurance powers was under consideration by Congress simultaneously with consideration of the War Damage Corporation Bill.[4]

Also as part of the governmental insurance program, prior to our entering into World War II Congress again took appropriate action to provide government life insurance at a premium for members of the armed forces by enacting the National Service Life Insurance Act of 1940 (38 *U. S. C. A.* 801). But World War II brought with it a danger to the homeland not foreseeable in World War I. The danger, of which the United States became vividly aware by the attack on Pearl Harbor, was from bombings by air attack in the United States and its terri-

---

[2]Act of June 29, 1936, Chapter 858, Title 2, 46 U. S. C. A. 1128a.
[3]Amended June 29, 1940.
[4]H. R. 6554, introduced February 6, 1942, enacted April 11, 1942.

tories. Insurance companies, having no prior experience with war risk protection from this danger, and having no backlog of experience ratings on which to base their premiums and no adequate reserves for this contingency, were unable to meet this new situation, as appears from the committee hearings on the War Damage Act.

It was to provide protection for this danger and to allay the fears arising from the threat of this danger, that the War Damage Corporation Statute was enacted. Appellee, War Damage Corporation, was the governmental agency set up to administer the Statute. As enacted, the law required the War Damage Corporation, with such general exceptions as it deemed advisable, to provide by July 1, 1942, insurance, on a premium basis, for damage resulting from enemy attack to property in the United States and in the territories and possessions of the United States and, as shall hereafter appear, as a concession to the territories of Hawaii and Alaska, to goods in transit between the designated localities. In the interim, before the premium-paying insurance program could be set up, the War Damage Corporation was permitted to provide certain free protection for damage which had already occurred or which might occur before July 1, 1942.

The Maritime Commission was authorized to provide, for a premium, war risk insurance for ships and cargoes (although until the 1942 amendment this was limited to American ships and cargo carried in American bottoms), if such insurance could not be obtained from private sources at a reasonable rate. It should be assumed that the commercial market provided marine war risk hull insurance at a reasonable rate at least until December,

1941, when the Maritime Commission first exercised its powers and wrote such war risk insurance.[5] Matson obtained war-risk hull insurance from the Maritime Commission at least as early as the first committee hearing on the War Damage Corporation Act.[6] During the period prior to the premium program, a limited marine coverage which might duplicate the coverage offered by the Maritime Commission was authorized to be extended by War Damage Corporation, but after July 1, 1942, no coverage was permitted which the Maritime Commission was authorized to provide.

It is appellee's position that the loss of appellant's LAHAINA was beyond the meaning, scope and purview of the Statute. As the District Court stated (Tr. 66 and 67), "The meaning of the statutory language must be resolved against the background of the history of and the circumstances impelling the legislation as well as from what may be gleaned from the Congressional proceed-

---

[5]Sen. Com. Hearings, 98. The following abbreviations for references will be used throughout the Brief:

(a) Transcript of Record—"Tr." followed by a page number;

(b) Senate Committee Hearings—"Sen. Com. Hearings" followed by page number;

(c) Senate Committee Report—"Sen. Com. Rep.", followed by page number;

(d) House Committee Hearings—"House Com. Hearings", followed by page number;

(e) House Commitee Report—"House Com. Rep.", followed by page number;

(f) Report of Committee of Conference—"Conf. Rep.", followed by page number;

(g) Volume 88 Congressional Record Permanent Edition—88 Cong. Rec. Perm. Ed., followed by page number;

(h) Appellant's Opening Brief—Op. Br. followed by page number.

[6]Docket No. 610, 2 U.S.M.C. 623.

ings." District Judge Goodman, as is evidenced from his opinion (Tr. 64-77) made a thorough study and analysis of the Statute, its background and its legislative history and properly concluded that appellant's loss was not covered by the Statute and that "plaintiff entirely misconceives the function of the defendant as intended by Congress." (Tr. 76).

If appellant's construction of the Statute is correct, vessels on coastwise, intercoastal, and inter-island voyages and on voyages between the United States and its possessions would be given free coverage from the first day of the war until July 1, 1942. It is common knowledge that there was a large number of vessels sunk by enemy action for which, if appellant's construction had any merit, claims could have been presented under the Statute. Only two claims, in addition to appellant's, for loss of or damage to vessels were ever presented to War Damage Corporation.[7]

It is thus apparent that practically the entire marine and the insurance world agree with the interpretation placed on the Statute by the War Damage Corporation and by District Judge Goodman rather than with the construction for which Matson contends.

The fact is that Matson did not place reliance on the statute to cover its vessels as it was more than three years following its loss that appellant even presented a claim to the War Damage Corporation.

---

[7]One was for a fishing vessel on the Atlantic Coast and the other for the SS Montebello lost on the Pacific Coast. Both were rejected (as was appellant's claim) by War Damage Corporation. No recovery was obtained by either claimant (Tr. 345-348).

Although several separate defenses were presented and argued before the District Court, District Judge Goodman based his decision that appellant's loss was not covered by the Statute squarely upon the meaning of the language itself as determined from the language, the background and legislative history of the Statute and, therefore, determined it to be unnecessary to consider the other defenses.[8] Appellant's Opening Brief is limited to argument on the issue as to whether the loss of the LAHAINA is included in the "in transit" clause of the Statute. We propose to answer squarely the arguments presented on this point and the legislative materials referred to, as did the District Court in its opinion. In addition thereto, we shall show that the War Damage Corporation, in conformity with Congress' frequently declared determination not to cover ships by the Statute, and, pursuant to specific authority conferred upon it by the Statute, excepted, among other things, the class of property which includes the LAHAINA and also shall show that the free protection section of the statute is discretionary and not mandatory and, therefore, does not confer upon appellant, or any other claimant, the right to compel a judgment for any loss occurring during the free period.

I. THE STATUTE DOES NOT COVER THE LOSS OF THE LAHAINA.

A. General Purpose of the statute was to provide protection for losses from bombings on land for which Commercial Insurance was unavailable.

The basic reason for the creation of War Damage Corporation is succinctly stated in the Report on the Bill by the Senate Committee on Banking and Currency:

---

[8]Tr. 66 and 67, Footnotes 1 and 2.

> "* * * Due to the widespread fear of bombing prevalent throughout the country during the first weeks of the war, principally along the west coast and in the metropolitan centers of the Atlantic seaboard, it was felt by the Administration, in the interest of allaying a state of mind affecting production and undermining morale, that assurances should be given that property owners would be given reasonable protection from losses due to enemy attack, since that protection *could not be obtained from private insurance companies.*" (Sen. Com. Rep. 2).[9]

That it was the fear of damage resulting from this relatively new type of warfare, bombing of our cities, particularly on the coastal areas, that was the impetus compelling the action, is stated frequently by the members of Congress during pendency of the legislation. For example, Senator Maloney, Floor Manager of the Bill for the Senate Committee, stated in committee,

> "I think that if there are bombings and there are great losses on *either of the coasts,* all the people of the country should share the burden, * * *" (Sen. Com. Hearings, 16).

and on the floor of the Senate in explaining the purposes of the bill and that "We should anticipate bombings in our country," he said,

> "This is a new experience in the United States." (88 Cong. Rec. Perm. Ed., 959).

It was pointed out in the committee hearings and on the floor of Congress that the insurance companies were not prepared to cope with the problem (Sen. Com. Hearings, 7, 8; House Com. Hearings, 18; 88 Cong. Rec. Perm. Ed., 1849).

---

[9]Emphasis throughout this brief is ours.

Marine Insurance companies, on the other hand, traditionally dealt with war risks on a world-wide plane, and wrote such insurance on hulls before, during and after the enactment of this statute (Tr. 279).

Accordingly, the fundamental basis for the War Damage Corporation's program was to provide some protection for property located in the United States and its territories where protection was not otherwise available.

B. The Statute was not intended to and did not cover every species of property.

Review of the background of Section 5-g not only demonstrates that it was for the protection of property located in the United States and its territories, but also that it was not the intention to give protection to every species of property within the geographical limits prescribed.

The basis of appellant's argument is that Congress intended to provide free protection in sub-section (b), within specified geographical limits, for every conceivable species of property, hence necessarily for vessels such as the LAHAINA (Op. Br. 10-11; 32-33).

Excerpts from the legislative history are quoted in support. For example, on page 32 of Appellant's Opening Brief, appears the quotation of the statement by Mr. Smith:

> "* * * It seems to me we should have that law simply covering losses *in toto*."

and by Mr. Sacks,

> "I incline to the theory that the Government owes protection to its citizens against enemy action regardless of the *amount*."

These references, examined in their proper context, relate to the pecuniary amount of protection to be given, not to the types of property.

The general pattern of the legislative history clearly shows that all types of property were not to be covered.

The press releases of December 13 and 22, 1941, which were the forerunners of the Statute, contained specific exceptions for

> "Accounts, bills, currency, debts, evidences of debt, money, notes, securities, paintings and other objects of art * * *"

These releases also made room for further express exceptions by stating "other terms and conditions for such protection will be announced as established." This plan that War Damage Corporation would determine the types of property continued throughout the development of the statute and its administration. The Statute specifically authorizes the Corporation to make general exceptions which include exceptions as to types or classes of property.[10] Throughout the administration of both the "free" and "premium" sections of the Act, War Damage Corporation excluded many types of property (Tr. 322). Mr. Claude Hamilton, who appeared before the committees of both houses, stated in support of an amendment to the house bill striking out a limitation to tangibles:[11]

> "It seems appropriate, then, to permit the Administrator to establish the various classifications of

[10]More fully discussed under Section II of this brief.

[11]See discussion (Section II-B of this brief) showing that the striking of the original limitation to tangibles was for the purpose of leaving the determination with respect to such limitations up to the administrative determination of War Damage Corporation.

> property to be covered as necessity and experience may require or permit. * * *'' (88 Cong. Rec. Perm. Ed. 1860).

Insured property was a type of property which was not intended to be within the protection of the Statute. Mr. Jones stated,

> ''* * * we do not propose to give anybody insurance who can buy insurance anywhere else.'' (Sen. Com. Hearings, 98. See similar statement House Com. Hearings, 18).

Doubt was raised as to whether property owned by foreigners would be covered (Sen. Com. Hearings, 16) and a representative of the American Municipal Association appeared specially and requested an amendment to cover public as well as private property, being in doubt as to whether, without such an amendment, the statute would include public property (Sen. Com. Hearings, 35 to 52).

These references to the legislative history clearly refute the basic premise of appellant that every species of property was covered.

C. The press releases did not cover ships.

The loss of the LAHAINA is not covered by the press releases not only because ships were not within the purview of the release but because the LAHAINA was lost prior to the effective date of coverage of the releases and also was not situated in the United States or one of the territories enumerated therein. The press releases are, however, of significance in showing the general scope of protection contemplated. It was announced through the re-

lease of December 13 that the Corporation was created in order

> "* * * to provide reasonable protection against losses resulting from enemy attacks which may be sustained by owners of property in continental United States through damage to, or destruction of *buildings, structures and personal property, including goods, growing crops and orchards.*"

The release of December 22 extended the protection to certain territories.

We do not take issue with appellant's contention (Op. Br. 25) that a strict application of *ejusdem generis* to the italicized phrase in the above quotation does not require a construction that "personal property" following "buildings and structures" must be personal property of a type associated with buildings and structures, but we think it perfectly plain that this description of the coverage bears no relationship to vessels and implies property located on land.

D. The legislative history of the Act demonstrates that vessels were not covered.

A full view of the legislative history of the Statute leads inevitably to the conclusion reached by the District Court that ships were not covered.

1. Proceedings in the Senate Committee and on the Senate floor prior to conference revision.

On January 14, 1942, one month after the first press release, the War Damage bill was introduced into the Senate (88 Cong. Rec. Perm. Ed., 318) and referred to

the Committee on Banking and Currency.[12] Mr. Jesse Jones, the Federal Loan Administrator, who had previously formed the War Insurance Corporation (original name of War Damage Corporation) and, by the issuance of the press releases, had launched a program of war risk protection, and who was the proponent of the bill, appeared before the committee to explain its purposes and answer the committee's questions.

The bill as introduced, following the lead of the press releases, was limited to property situated in the United States and in designated territories and did not include an "in transit" clause.

The first mention of ships appears on page 10 of the Transcript of the Senate Committee Hearings when Senator Brown stated he was interested in determining where the line would be drawn between private and government insurance and specifically inquired whether a ship in collision, as a result of governmentally-imposed blackout conditions, would be covered. Mr. Jesse Jones replied,

> "That is maritime insurance. We do not provide maritime insurance."

A few minutes later Senator Brown stated that he thought the War Damage Corporation had "the power to take care of maritime insurance" and Mr. Jones replied that the Maritime Commission already does that (Sen. Com. Hearings, 11).

There was then, in the entire background of the Statute from the issuance of the press releases through the first

[12]The identical bill was introduced into the House at the same time.

day of hearings in the Senate Committee no inkling of any intention to provide any marine coverage and no indication that ships or cargoes were under consideration.

The first suggestion that the bill should include a limited marine protection for goods came at the beginning of the second day of the hearings before the Senate Committee when Delegate King of Hawaii and Delegate Dimond of Alaska appeared to present a situation peculiar to their respective territories. Their position was that both Alaska and Hawaii are dependent for their existence on a life line of goods imported and exported. These goods were as important to them while "in transit" as goods "situated in the United States" were to the residents of continental United States. They urged that these goods and products should be given the same protection while in the course of transportation as was given to the goods of the people in the States situated in the States. They were not interested in ships but only in the *goods* which ships transported.

Delegate King led off with the statement:

> "Mr. Chairman, this subject of war insurance is, of course, very important to the Territory and to the people there. Furthermore, the phase of it that would carry the coverage of *goods* in transit is extremely important. We are dependent entirely upon waterborne transportation. The bill as it now reads would protect tangible property, real and personal, while situated in the United States.
>
> "*Goods* can be transferred from Maine to Florida and not leave the United States, but unfortunately the minute *they* are transferred from Hawaii to any other part of the country *they* pass out of the exact

> technical status of being within the United States. I am concerned as to that feature." (Sen. Com. Hearings, 25).

Mr. King had two additional points: (1) that the Statute should go back to cover losses from December 6, 1941, and (2) that money and securities be covered:

> "So, I should like to ask the committee to consider making the bill effective as of the calendar date December 7 to include coverage for all forms of property in transit from one part of the United States to another, and to include intangible property—that is, currency and securities—under the types of property covered. Those are the three points I should like to suggest, Mr. Chairman." (Sen. Com. Hearings, 26).

Appellants (Op. Br. 35) quoted a portion of the foregoing remark, emphasizing the phrase, "all forms of property in transit" as lending some possible support to the position that perhaps Delegate King had ships in mind as well as goods. It is apparent, however, that Mr. King in referring to "all forms of property" meant both tangible goods and intangibles such as the money and securities he had referred to. The bill at that time was limited to "tangible property." It was also limited to property "situated." He desired to broaden its coverage to include both tangibles and intangibles, i.e., "all forms" in transit and to extend the coverage for property "situated" to intangibles. He so stated.

This misconceived interpretation was the only aid appellant could find in Mr. King's entire testimony. Nowhere are ships mentioned, but only goods, products, and

things carried. A few additional excerpts from his statement, to the Senate Committee, both oral and written, will serve to illustrate:

> "Hawaii sends its *products* to other parts of the United States by water-borne transportation, and receives its merchandise through the same means, a commerce which normally amounts to over $200,000,000 in value annually. Commercial rates for insuring this *transfer of goods and commodities* are prohibitive in war-time, and would destroy the economy of the Territory." (Sen. Com. Hearings, 27).
>
> * * * * * * *
>
> The problem of insurance while *goods* are in transit is absolutely vital to the Territory. We ship out of Honolulu everything we *produce* and that we sell in the mainland markets, and we have to have everything shipped out to us. Everything we buy comes from all over the country. (Sen. Com. Hearings, 27).

Delegate Dimond, who testified immediately after Delegate King, made a similar plea except that he was not concerned with the feature of making the coverage retroactive to December 7, 1941. He emphasized that the situation in Alaska was even more acute than in Hawaii by referring to the fact that, as a result principally of the increased hazard, the steamship rates had risen 35% to Hawaii, while those to Alaska had risen 45%, and stated:

> "So, if that is any indication of the risk, why, the risk is even greater in *transporting supplies* between the United States and Alaska than exists with respect to the *transportation of supplies* between Hawaii and the United States." (Sen. Com. Hearings, 32).

It is evident from this remark that Mr. Dimond, in referring to steamship rates, was not concerned with ships, as appellant seems to infer (Appellant's Br. 36).

Senator Maloney, who took an active part in the formulation of the Statute, acting as Floor Manager, and on the Conference Committee, was not in doubt as to the fact that it was "goods" with which the Delegate was concerned. He asked,

> "Will you tell me what your concern is about the *transportation of goods* between the United States and Alaska?" (Sen. Com. Hearings, 33).

Mr. Dimond responded,

> "Yes, Sir. I suggest in fairness, since *goods in course of transportation* between the various States are covered by what Mr. Jones has well called this policy of insurance, that *goods in transportation* between the integral parts of the United States, such as Hawaii and Alaska, even though on the high seas, ought to be given the benefit of the same kind of insurance. I think that is only fair. * * *" (Sen. Com. Hearings, 33).

Senator Clark of Idaho recognized the problem, saying:

> "You get into a very peculiar situation there unless you do afford this extended protection to *goods in transit* either by airplane or by steamship." (Id. 33).

Senator Maloney wanted to be sure he understood how far Mr. Dimond wished to go, and asked:

> "I am anxious to get clear in my mind how far you would have us go. Would you want protection for *petroleum products* going up there by tanker and for

other *things* that are going to Alaska?'' (Sen. Com. Hearings, 33).

And Mr. Dimond responded:

> ''Whatever *products* are protected under this insurance policy in the States and in the Territories should be protected just as much on the high seas between the States and the Territories whether it is *petroleum products* or *salmon,* or *sugar* and *pineapples,* which are *produced* in Mr. King's Territory, or what not.'' (Id. 33).

Appellant seeks to infer from the use of ''what not'' in this last remark that Mr. Dimond was including something other than goods or articles conveyed (Op. Br. 36). As the word *''products''* is used and particular products are listed, is it probable that Mr. Dimond was doing any more in using the phrase ''or what not'' than including any other *products* not specifically mentioned. The point made was that Senator Maloney had singled out ''petroleum products.'' Mr. Dimond in effect replied, ''all *products.''*

We cannot perceive how anyone reading the full text of the testimony of these delegates before the committee could come to any conclusion other than that to which the District Court came, namely, that they were urging an amendment to cover *''goods* in transit.'' (Tr. 68).

Senator Clark of Idaho championed the cause of Delegates Dimond and King and proposed an amendment to cover the situation presented by the delegates. The amendment was first suggested, after the following comment by Mr. Jones:

> "With reference to shipping about which Mr. Dimond testified, the Maritime Commission can insure *cargoes*. If it is desirable for us to extend additional help there we can do it under the regulations. I concur with his views." (Sen. Com. Hearings, 73).

Senator Clark thereupon remarked that under the bill as it was then written, because of the limitation to "property situated in the United States," Mr. Dimond's problem could not be covered. He then stated:

> "* * * I had a proposed amendment that I was going to offer in due time, saying 'or in transit between.'
>
> "That would merely remove the limitation, so that you could go into this question of shipping." (Id. 73).

Appellants (Op. Br., 38) quote this last sentence by Senator Clark and interpret it as indicating that the "broadest possible latitude" was intended with respect to the introduction of the "in transit" clause, but we submit that the word "shipping," as used by Senator Clark, in light of the preceding discussion and the testimony of Delegates King and Dimond was not intended by the Senator as in any way covering vessels.

The Clark "in transit" amendment was formally adopted in the Senate Committee Hearings near the close of the third day (Sen. Com. Hearings, 100). Its formal adoption was immediately preceded by a general discussion with respect to the problems presented by delegates King and Dimond and the extent of the insurance powers of the Maritime Commission. This discussion was initiated by Senator Brown, who asked, "You are satisfied that you

should not touch Maritime insurance at all in this bill?'' To this Mr. Jones replied:

> ''No; I am not. I think we should have the authority to cover these *things* in transit between Alaska and Hawaii and the mainland in cooperation with the Maritime Commission.'' (Sen. Com. Hearings, 96).

The discussion continues for several pages in the record but the following excerpts suffice to show that duplication of coverage by the Maritime Commission was, so far as possible, to be avoided and that the amendment was intended to cover objects conveyed and not the conveyance.

> The Chairman (Senator Wagner). I think that when Senator Clark proposed this amendment, he assumed that there was no insuring of *cargoes* by the Commission.'' (Sen. Com. Hearings, 98).

Mr. Jones advised the Committee of his discussions at the White House after the first day of hearings, saying,

> ''I discussed this matter in detail with the President. I raised every question that has been raised here. He thought that all these suggestions should be considered and that we should cover *cargoes in transit* from the islands to the mainland if insurance is not otherwise available. He thought if we charged a premium, insurance should be available to the cities. Generally I tried to remember every suggestion that has been made here, and he thought every one had merit.'' (Id. 99).

The Report of the Senate Committee on the Bill does not mention the ''in transit'' clause. The Committee version of the Senate bill was presented on the Senate floor February 3, 1942, five days after the last day of hearing

before the Committee. Senator Maloney acted as Floor Manager for the Committee. In his explanation of the coverage of the bill he explained the "in transit" clause in the following language:

> "The policy would cover all tangible property of Americans in the United States which might be damaged as a result of bombing or the direct hazards and effects of war caused by enemy attacks. The committee went a step beyond that. It made provision in the language of the bill for the War Damage Corporation to afford *protection to the* CARGOES *of vessels traveling between the United States and our Territories and other places. That not only means that the cargo of the vessel* itself could be insured—and I may say parenthetically that the Maritime Commission has certain moneys and authority under existing law to provide like coverage—but it also provides for covering of the personal effects of people traveling on such vessels." (88 Cong. Rec. Perm. Ed. 958).

Although the debate in the Senate prior to adoption of the committee bill was exhaustive, covering some 14 pages of the Congressional Record, this is the only reference to the "in transit" clause. There is no mention of protection for ships, hulls or vessels.

Appellants endeavor (Op. Br. 42) to lessen the force of Senator Maloney's reference to "cargoes" by stating that Senator Maloney was not endeavoring to include all types of property covered in the "in transit" clause. Senator Maloney had taken an active part in the Committee Hearings and in the discussion engendered by the appearance of the two delegates. His reference to "cargoes" in explaining the bill to the Senate was the natural

result of the discussion in committee in which cargoes and things carried were synonymous with "in transit."

2. Proceedings subsequent to the enactment by the Senate of the Senate Bill.

The House Committee on Banking and Currency began its hearings February 2, immediately discarding the Bill as originally introduced in the House, and proceeding with a consideration of the Bill reported out of the Senate Committee. During the course of four days of hearing, the protection offered by the "in transit" clause is frequently mentioned. It is first mentioned by Mr. Williams, a member of the Committee and one of the managers on the part of the House in the conference, in the following discussion:

> "Mr. Williams. I notice a provision in the Senate bill which *provides for goods in transit,* in transportation; what does that mean?
>
> Mr. Jones. That was put in there at the suggestion of the Representatives of Alaska and the Hawaiian Islands. Their only contact with the mainland is by water; so we thought insurance should be available to them for this purpose.
>
> * * * * * * *
>
> Mr. Williams. Would that insurance cover any transportation of *goods, or goods in transit,* that belonged to foreign countries—foreign nationals?
>
> Mr. Jones. It could, if they were not enemy countries.
>
> Mr. Williams. The same principle would apply to that insurance that would apply to property insurance?
>
> Mr. Jones. Yes; I am sure that is right.
>
> Mr. Williams. It would cover any *goods* or any property that was not owned by an enemy alien.

Mr. Jones. That is correct. That would be our thought about it.

Mr. Williams. Well, would this cover insurance of *goods* in foreign vessels?

Mr. Jones. Yes; it could, because a good many of those vessels are foreign vessels; but they are friendly foreign vessels.

Mr. Williams. It would not cover the vessel itself, would it—or would it?

Mr. Jones. I do not think so; no. *We would insure the merchandise in the vessel.*" (House Com. Hearings, 21, 22).

It is significant that Mr. Williams assumed at the outset, without prior explanation, that "property in transit" referred to "*goods* in transit." He makes no reference to anything except "goods" until, as an after thought, he states that it would not cover the vessel itself and seeks and obtains assurance on the point from Mr. Jones. While this question and answer immediately follow remarks about goods in *foreign* vessels, considering the discussion as a whole it is apparent that it was the first time the thought of protection of vessels, whether foreign or American, had occurred to Mr. Williams. The unavoidable inference is the opposite of that drawn by appellant (Op. Br. 43, 44).

Delegates King and Dimond also appeared before the House Committee. Mr. King presented his case orally, Mr. Dimond by written statement. Mr. King launched into his discussion with the comment,

* * * * * * *

"At the instance of Delegate Dimond and myself, the Senate adopted an amendment that extended that protection or coverage to property situated in the

United States, as defined by the bill, and 'to such property in transit between any points located in any of the foregoing.' The importance of that to us, Mr. Chairman, is that all of the commerce with Alaska and Hawaii and other parts of the United States is waterborne, or carried by air.

"Personal property would be completely covered in transit between Detroit and New Orleans or between Maine and Florida under the original terms of the bill; but all of the *goods* that we ship out of Hawaii—sugar and pineapples, particularly, but also other *products*—and those that go out of Alaska, such as salmon and furs, have to go by water. Also, all of the *goods* that we purchase from other parts of the United States have to go to Hawaii in waterborne commerce. It is the same with Alaska." (House Com. Hearings, 52).

These remarks, unmistakably limited to *goods, products* and *things carried,* were followed by an extended discourse on "the increase in the war risk rate on *cargoes.*" (Id. 53). He pointed out that these rates to Alaska jumped 100 times over peacetime rates and were, at the time of his testimony, 30 times that rate. He stated that a higher rate than 1/10 of 1 per cent "would burden shippers from Hawaii, who must sell their *products* on the mainland, doing so in competition with *goods* that have not paid that rate." (Id. 55).

Further proof that the House Committee was concerned with cargoes, goods and things carried and not with the vessel, when indeed they were concerned with marine coverage at all, is shown by the following additional extracts from the House Committee Hearings.

Mr. Lynch stated that as long as insurance companies could handle insurance on hulls:

> "* * * plus the fact that we have the situation with respect to the Maritime Commission, that there is no further need for us to legislate on the point, *except as to the cargo that might be in transit,* which could not get where there were reasonable rates available from the private insurance companies or through the Maritime Commission." (House Com. Hearings, 42, 43).

Mr. Steagall, the chairman, remarked that Mr. Lynch had thus "expressed accurately the views expressed both by Mr. Jones and Mr. Hamilton, as *I* understand their position." (Id. 43).

Mr. Lynch offered an amendment excluding the operation of the "in transit" clause where the insurance could be obtained privately or through the Maritime Commission. There followed a considerable discussion concerning the "in transit" provision, whether it should be left in and whether it included "*goods* in transit" on railroads and trucks as well as on ships. While it seems apparent that the committee members were confused with respect to some aspects of the coverage intended, there is not the slightest indication that anyone considered the "in transit" clause embraced the vehicle carrying the goods:

> "Mr. Williams. Mr. Jones, what is the necessity for passing another act at all with reference to *goods* in transit. Why cannot the Maritime Commission law, or whatever law it is in the form in which it was passed, be amended to meet the present emergency and leave out of consideration an entirely different

act to insure *goods in transit?* It seems to me that you are setting up two agencies to do exactly the same thing when one agency could take care of it * * *"

Mr. Jones. The bill we submitted did not provide for that.

Mr. Williams. That provision was put on in the Senate?

Mr. Jones. That was written into the bill later. *It was changed,* as I recall, *at the request of the rep-representatives of Alaska and Hawaii.*

* * * * * * *

Mr. Gifford. Transit by water or railway would also be covered in this field; it is not limited to *cargo* carried on the water.

Mr. Williams. I would cover *cargo* on both boats and railroads, *goods in transit* would be covered?

Mr. Gifford. *Goods* or *boats and railroads.*

* * * * * * *

Mr. Williams. Is it the intention that *goods in transit,* on railroads and ships, or trucks, would be covered by this provision?

Mr. Jones. They could all be brought in if you included that language.

* * * * * * *

The Chairman. What was the reason for the change in the Senate? It was not contemplated by the bill as introduced that we would *take care of goods in transit.* That amendment was put on by the Senate, was it not?

Mr. Jones. Yes.

Mr. Williams. Is it not a fact, however, that *goods being shipped in transit* has reference only to water transportation?

Mr. Jones. That was the purpose.

* * * * * * *

> The Chairman. Is it your understanding that if we use that broad language, you would not necessarily be limited to vessels on the water, but that it would cover any *goods in transit* by any method? I intend to suggest that there may be cases which will require that interpretation.
>
> Mr. Jones. We have transit by plane, and by rail or truck also." (House Com. Hearings, 43 to 45).

Mr. Patman, on the last day of the House Committee hearings, inquired of Mr. Hamilton:

> "* * * this bill, if it passed, would it protect the *owner* against *loss of cotton,* we will say, that was on the high seas after Dec. 7 and the ship was sunk, say, like the CITY OF ATLANTA?" (House Com. Hearings, 80).

He was not concerned with the *ship* but the cargo. The answer given was that the bill as then existed though it had the "in transit" clause, only covered losses in the future. Accordingly a retroactive clause was inserted, and Patman again inquired:

> "That would include *cotton in transport?"* (House Com. Hearings, 82).

and received an affirmative answer.

Later when the Committee was summing up the various provisions of the bill, Mr. Patman adds:

> "And includes *goods* in transit?"[13]

to which Mr. Steagall replied:

> "It does, subject to the amendment Admiral Land suggested." (Id. 93).

---

[13]At no stage in the proceedings was the Bill actually worded, "goods in transit", but always read, "property in transit".

Appellants' characterization of our reliance upon "isolated remarks at Committee hearings" (Op. Br. 21) is demonstrated to be manifestly erroneous in light of the foregoing extensive excerpts from the record of both Committee hearings.

The only reference to the "in transit" provision in the Report prepared for the House Committee is a verbatim recital of the statutory terms.

Appellant (Op. Br. 45, 46) quotes the instance on the floor of the House at the time the House Committee Bill was under consideration, in which Mr. White inquired whether the bill applied to cargoes and ships on the high seas, and Mr. Steagall hastily replied, "Yes, under certain conditions," after which Mr. Steagall, who was obviously not sure of his grounds, refers the question to Mr. Bland who was the author of the Maritime Commission Insurance amendments then under consideration. Mr. Bland states:

> "Things like that are being taken care of under the War Insurance bill [Maritime Commission Authority] which was extended today. I have just put into the basket a report on the amendment to that bill which covered every phase of the marine liability and risk." (88 Cong. Rec. Perm. Ed. 1847).

District Judge Goodman appreciated the significance of this reply (Tr. 73).

That other members of the committee were aware that the Statute was not intended as a marine insurance measure, is shown by Mr. Williams' statement when he rose on the floor of the House in opposition to a proposed

amendment granting free protection under the Statute to a limit of $3,000 and said:

> "The Government will be furnishing *three kinds of insurance* if this legislation passes. The Government is now furnishing insurance to the service men and furnishing marine insurance, and this act proposes to furnish property insurance to those who want it." (88 Cong. Rec. Perm. Ed. 1863).

There was no mention of the "in transit" provision in the Senate when the conference agreement was unanimously accepted by the Senate (88 Cong. Rec. Perm. Ed. 2653-2654).

Appellant points to two isolated instances on the floor of the House prior to its adoption of the conference agreement in which Mr. Smith of Ohio asked Mr. Steagall whether the current "sinkings" were covered by the Statute (Appellant's Op. Br. 49 and 50). The first time the question is asked, Mr. Steagall replies in the affirmative (88 Cong. Rec. 2658); the second time the answer is ambiguous (88 Cong. Rec. Perm. Ed. 2660, 2661). Plaintiff argues that the word "sinkings" necessarily refers to hulls. It is submitted that the word "sinkings" is sufficiently broad to include loss of life and cargo as well as hulls. Appellant does not, we presume, contend that Mr. Steagall was advising the House that loss of life was covered by the Statute. Loss of life, as loss of hulls, was not a subject matter of the Statute. The question was but a reiteration of the inquiry of Mr. Patman in the Committee hearing as to whether the *owner of cotton* would be protected if a ship sunk, like the City of Atlanta. It was so understood by Mr. Steagall.

3. Conclusions from the Legislative History.

From earliest days, statements in the committee hearings of members of the committee, interested parties and of the draftsmen of the proposed bill, were resorted to as an aid in determining legislative intent,

> 2 *Sutherland Statutory Construction*, 3rd Edition, Sec. 5009,

but the rule was to the contrary with respect to statements on the floor of Congress in the course of debates. In

> *Duplex Printing Co. v. Deering* (1921) 254 U. S. 443, 474, 65 L. Ed. 349, 41 S.Ct. 172,

the Court stated:

> "By repeated decision of this Court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body."

While statements in Congressional debates are now held to be admissible, the reasons for their prior inadmissibility, as opposed to the admissibility of statements in committees, act as a guide in determining the *weight* to be given such statements.

These comments with respect to the weight to be given in the various stages of legislative history are particularly pertinent in view of the extent of appellant's reliance upon statements on the floor of the House.

There was no statement made on the floor of the Senate nor during the extended Senate committee hearings

to which appellant can point as indicative of an intention to cover ships. It is only on the basis of two or three unrelated and misleading remarks made on the floor of the House that Appellant supports its position that ships were within the Congressional purpose.

The inferences drawn by appellant from these isolated remarks conflict with the essential purpose of the Act, the reasons for the insertion of the "in transit" clause and the repeatedly stated views of the committees. It is hardly conceivable that these committees of Congress or the Conference Committee would have casually determined to enlarge this statute to cover the huge field of marine insurance of ships. It was surely known to Congress in January and February of 1942 that the largest losses so far suffered from enemy action were the loss of ships. The assumption of this vast burden which would have meant an extension beyond the purposes of the statute and which was already provided for by other national legislation without extended hearings, discussion and debate on the question and the testimony of interested parties and organizations or without a single declaration that a program of free insurance for ship owners had been decided upon, is unthinkable.

While it is perhaps indisputable that no interpretation of the statute is entirely consistent with every expression of opinion and intent in the legislative history, no one could read the full legislative history and arrive at any conclusion other than that reached by the district judge. It is apparent from his opinion that Judge Goodman carefully read and analyzed this legislative history. We quote a portion of his conclusions with respect thereto:

" * * * Certain statements on the floor of Congress might be pointed out as indicative of a difference in understanding on the part of individual Congressional members as to the true meaning ascribable to the phrase 'property in transit' or the purpose of its insertion in the bill by Senate Committee Amendment.

"But nowhere throughout the proceedings in Congress or in Committee is there any statement or discussion indicating a conscious Congressional intent to extend the scope of the phrase beyond that originally contemplated.

"The entire history of the legislation, viewed in the background of its origin and objectives, convincingly exhibits a general Congressional intent to extend reasonable free government protection against loss from enemy attack, to property in the United States, its territories and possessions, and to *goods* undergoing transportation between these points, until a system of paid insurance contemplated thereby had been put in operation; and to thereafter extend similar protection under contract of insurance with premium payment, except as to *goods in transit* insurable by the United States Maritime Commission. Coverage at any time by the War Damage Corporation, of the vehicle of maritime transportation,—the vessel itself,—was never within the contemplation of Congress." (Tr. 74 and 75.)

E. The legislative history demonstrates that War Damage Corporation was not to cover what the Maritime Commission was authorized to cover.

That loss of ships was not within the purview of the statute is further proved by the fact that the legislators were consciously endeavoring to avoid duplication of the Maritime Commission's powers. Prior to the appearance

of the Alaskan and Hawaiian delegates at the Senate Committee hearing, the question of marine coverage arose, and Mr. Jones stated categorically:

> "We do not provide for Maritime Insurance."
> (Sen. Com. Hearings, 10.)

In the committee hearings, there are repeated statements concerning the undesirability of duplicating any of the coverage of the United States Maritime Commission through War Damage Corporation. Such statements were made by Congressmen, by Senators, by Mr. Jones of the R. F. C.[14] The importance of avoiding duplication was stressed by Admiral Land, Chairman of the Maritime Commission, in a letter sent to the House Committee (House Com. Hearings, 56). Appellant's counsel (Op. Br. 40) concede that the legislators considered "* * * that duplication was not desirable", but contend that since the "in transit" clause was adopted, the Senate Committee deliberately chose duplication. Admittedly, in order immediately to meet the pleas of Hawaii and Alaska, a *limited* duplication of the powers of the two agencies was adopted by the Senate, but only for that purpose. The House Committee, which used the Senate bill as the basis of its discussions, at the suggestion of the Maritime Commission, eliminated any possible duplication by the proviso:

> "That such protection shall not be extended to property in transit upon which the United States Maritime Commission is authorized to provide Maritime War Risk insurance." (House Com. Hearings, 93; House Report 2.)

---

[14]See, for example, Sen. Com. Hearings, 11, 97, 99; House Com. Hearings, 41, 43, 44, 56, 87, 88; 88 Cong. Rec. Perm. Ed. 1847.

The Maritime Commission was then[16] authorized to cover American ships, their cargoes and personal effects carried in them.

There is no published record of the discussions which took place in the Committee of Conference. There is therefore no exact source[17] from which to ascertain the reason for changing the amendment introduced into the House bill at Admiral Land's suggestion, so that it would read:

> "Provided, That such protection shall not be applicable [after the date determined by the Secretary of Commerce under this subsection][18] to property in transit upon which the United States Maritime Commission is authorized to provide Marine War Risk insurance."

The most reasonable explanation of the change made in conference is that it was the result of the evident uncertainty throughout the proceedings as to just what the Maritime Commission was authorized to cover and was, as the District Court so aptly put it,

> "* * * that the legislators felt that by July 1, 1942, if not earlier, the Merchant Marine Act would have been so effectively amended to cover all Maritime risks as to permit of the desired withdrawal of the War Damage Corporation from any field of maritime activity." (Tr. 74.)

---

[16]46 U.S.C.A. 1128a—At this time, there was under consideration in Congress a bill which would extend the Maritime Commission powers to foreign ships. (See opinion of the District Court, Tr. 73.)

[17]The Conference report makes no explanation for the change.

[18]The bracketed portion is the essence of the change made in conference.

There is certainly no indication that there was any reversal of the policy of simply taking care of the Hawaiian and Alaskan situation, or of the desire to avoid duplication of the Maritime Commission powers and to suddenly, without explanation, grant free insurance to ships.

Appellant at page 53 of its brief charges that the District Judge, in stating that the Clark Amendment was adopted to take care of the needs of the Delegates from Alaska and Hawaii was acting upon an erroneous assumption that goods were being transported on foreign ships between the United States and Hawaii and Alaska. Whether the law prohibiting foreign ships from carrying cargo between American ports was still in effect during the first months of the war is wholly beside the point because it is clear beyond a doubt from the committee hearings that Congress, whether erroneously or not, acted upon the assumption that cargo was carried on foreign bottoms to the Hawaiian Islands and Alaska, as well as elsewhere, and that the Maritime Commission had no power to provide insurance for such cargo (Sen. Com. Hearings 97, 98, 99; House Com. Hearings 41, 42, 43, 63). If the representation of the law was in error, it is of no moment because it was accepted by Congress as one reason for adopting the Clark Amendment.

F. An interpretation of the statute which would include ships would lead to absurd results.

The last section of appellant's opening brief (pp. 54 to 56) seeks to discredit the decision of the District Court on the grounds that "the purpose of the Act was to establish free protection during the free period for *all* losses sustained by property owners as result of enemy

attack'' and hence that to discriminate against ships, and possibly against trucks and trains, by not including them in the free coverage offered by W. D. C. under the ''in transit'' clause would be to ascribe to Congress captious, irrational and discriminatory action.

Land vehicles such as trucks and trains were not within the scope of the ''in transit'' clause, but would be covered by the ''property situated in'' clause. Ships were covered by the Maritime Commission statute, and the fact that the Maritime Commission may not have exercised its authority to insure ships prior to December, 1941 (Sen. Com. Hearings, 98) shows only that adequate insurance until that time was available from private companies at reasonable rates as the Commission's *power* to grant insurance was based upon a prior finding that adequate insurance was *not* obtainable from private companies at reasonable rates. (46 U. S. C. A. 1128 (a).) Ships were accordingly not discriminated against in our statutory program of war risk insurance.

On the contrary, it would have been the rankest discrimination for Congress to have given free insurance to some shipowners and to have required the owners of other American ships to pay for war risk protection. That is exactly what appellant's position would require. If the ''in transit'' clause were construed to afford coverage of ships, the whole scheme would have been meaningless and utterly haphazard. It would have been immediately apparent to the Congress which had provided for lend-lease and knew that a great portion of our Merchant Marine was carrying goods to foreign countries, that to give free protection to shipowners whose vessels were in the do-

mestic trades and *deny* such protection to all others would have resulted in great injustice and absurd results.

If Sec. 5(g) were construed as including ships, its language would restrict its coverage to vessels which happened to be within the three-mile limit of the coast of the United States or traveling between ports in the United States or between the United States and its territories or possessions or interterritorially. Ridiculous consequences would ensue.

The owner of an American ship on a voyage from the West Coast to South America via Puerto Rico would be given free insurance for part of the voyage but not for the rest. An American shipowner whose vessel was traveling between San Francisco and Seattle would have been given free war risk insurance, but another American shipowner, whose ship was en route to Vancouver, B. C., would have to pay for its protection except that during the not infrequent periods when it happened to be within the three-mile limit, and hence "situated in the United States," it would have received free protection.

Congress should not be presumed to have intended such a meaningless now-you're-insured, now-you're-not-insured situation. Furthermore, it is unreasonable to assume that Congress would intend to give free insurance solely to our ships plying between the United States and our territories or between different territories, thus discriminating against our vessels on all other voyages when, as was well known, American flag ships in substantial numbers were carrying war supplies and lend-lease goods to our allies in other countries, and were running greater risks of loss by enemy attack than vessels engaged in

domestic trade. No sensible purpose would be gained by such a discriminatory scheme.

The accepted rule of statutory construction that unreasonable, absurd, or ridiculous consequences are to be avoided compels rejection of appellant's interpretation.

> 50 Am. Jur. 386; *U. S. v. American Trucking Association* (1940), 310 U. S. 534, at 543, 84 L. Ed. 1345, 60 S. Ct. 1054.

Further evidence of the absurdity of appellant's position that ships should be included in the free coverage of the War Damage Corporation Act is shown by the fact that at the time that statute was under consideration Congress was advised that another agency of the government, the Maritime Commission, had already granted shipowners increases of 35% to 45% in freight rates for the purpose of offsetting "the hazard of sea transport." (House Com. Hearings, 57.) Appellant, Matson Navigation Company, had already been granted such an increase in freight rates, which increase or "surcharge" reflected "the extra cost of war risk insurance."[19]

Surely, after Congress had notice that one governmental agency had previously authorized shipowners to make an increase in freight rates to cover the cost of either purchasing war risk insurance on their ships or providing self-insurance for such risks, it would be unreasonable to impute to Congress the intention to provide simultaneously, through another governmental agency, complete relief (by giving them free protection until July 1, 1942) for the same shipowners of the risks for which they had already been allowed compensation for assuming.

---

[19]Docket No. 610, 2 U.S.M.C. 622 at 623.

G. Aside from any general power to make exceptions, the interpretation of the statute by the War Damage Corporation as not including ships is entitled to weight.

War Damage Corporation, the agency which fostered and promoted the statute, and which was charged with its administration, properly interpreted the "in transit" provision as not being intended to have application to vessels (Tr. 7) and, in order to set at rest any contention that vessels, such as the LAHAINA, were within the purview of the statute, exercised its authority to make general exceptions, interpreting that power as authorizing exceptions as to types of property and pursuant thereto, excepted ships, other than those in course of construction or used only for storage, from protection.[20]

The interpretation of the statute by the agency charged with its administration is persuasive in arriving at the true meaning of the statute and is entitled to great weight by this Court in its determination of that meaning. This is particularly so where, as here, the interpretation is substantially contemporaneous with the passage of the statute and is by the agency which fostered, promoted and steered the bill through Congress.

The recent Supreme Court decisions, following this established rule, are legion. In

Billings v. Truesdell, (1944) 321 U. S. 542, 64 S. Ct. 737, 88 L. Ed. 917,

the Court was required to interpret sections of the Selective Service Act of 1940. Following the passage of the Act, the Director of Selective Service had issued certain

[20]The "general exceptions" clause and War Damage Corporation's administrative action pursuant thereto, is discussed in full under Section II of this brief.

regulations relative to the provisions under consideration. The Court said that the "Selective Service regulations support our interpretation of the Act" and

> "* * * the interpretations of an act of Congress by those charged with its administration are entitled to persuasive weight."

In

> *U. S. v. American Trucking Association* (1939) 310 U. S. 534, 84 L. Ed. 1345, 60 S. Ct. 1059,

both the I. C. C. and the Wage and Hour Division of the Department of Labor had interpreted the provisions of the Fair Labor Standards Act under consideration by the Court. The Court said:

> "*In any case such interpretations are entitled to great weight.* This is peculiarly true here where the interpretations involve 'contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.' Furthermore the Commission's interpretation gains much persuasiveness from the fact that it was the Commission which suggested the provisions' enactment to Congress."

In

> *Adams v. United States* (1943) 319 U. S. 312, 63 S. Ct. 1122, 87 L. Ed. 1421,

the Court said,

> "These agencies cooperated in developing the act and their views are entitled to great weight in its interpretation. * * *" (p. 1423.)

and in the recent case of

> *Commissioner v. South Texas Lumber Co.,* (1948) 68 S. Ct. 695, 92 L. Ed Adv. Op. 631,

the Court stated the rule with respect to administrative regulations construing a statute, saying, p. 698:

> "* * * they constitute contemporaneous constructions by those charged with administration of these statutes *which should not be overruled except for weighty reasons.* * * *"

H. The plain meaning of the language of the Statute excludes ships.

Appellant rests heavily on the position that the literal words of the Statute include the loss of the LAHAINA. We shall, in this subdivision of the brief, take issue with the appellant's interpretation of the literal meaning of the Statute. But even if we were to assume for purposes of argument that appellant's position with respect to the literal meaning of the words used is correct, the courts have found that general words used in a statute frequently cannot be given their broadest meaning without defeating the legislative purpose. From the days of Chief Justice Marshall to present times our courts have seen the need of rejecting the literal meaning of statutes in order to give them the sense desired by Congress.

> "It is manifest that these arguments rest entirely upon the letter of the statute. They take no account of the fact that its application in the circumstances under consideration is foreign to its purpose; * * *
>
> "Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned. In *U. S. v. Palmer,* 3 Wheat. 610, 631, 4 L. Ed. 471, 477, Chief Justice Marshall, in construing the Act of Congress of April 30, 1790, Sec. 8, * * * relating to robbery on the high seas, found that the words 'any person or persons' were 'broad enough to com-

prehend every human being', but he concluded that 'general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them.' * * *"

Sorrells v. United States (1932), 287 U. S. 435 at 446, 77 L. Ed. 413, 53 S. Ct. 210.

1. Appellant's interpretation of the plain meaning of the words is erroneous.

On pages 7 to 12 of Appellant's Opening Brief, the contention is made that the phrase in subsection (b), "loss or damage to any *such property,*" (upon which Matson must base its claim), and the phrase in subsection (a), "*to such property* in transit" necessarily relate back to the isolated phrase "property, real and personal", and embrace every species of property, including ships.

But the phrase "property, real and personal" cannot be isolated from the sentence in which it is contained. The full sentence is:

> "The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to *property, real and personal,* which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), *with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable.*"

It will be observed that the sentence refers to the protection against loss of or damage to property, real and personal, with two qualifications: (1) loss of property,

real and personal, *which may result from enemy attack,* and (2) loss of property, real and personal, * * * *with such general exceptions* as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Appellant would not and does not contend that the first qualification should be disregarded, and hence that loss of or damage to property, real and personal, *from any cause,* is protected, and, by the same token, appellant cannot validly contend that the antecedent "property, real and personal" can be divorced from the qualification "with such general exceptions."

Ships as well as certain other classes of property were excluded by general exceptions promulgated by War Damage Corporation.

An analogous situation arose in connection with the provisions of the War Risk Insurance Act of 1917. That statute provided, among other things, that "any person in the active service on or after the 6th day of April, Nineteen Hundred and Seventeen, while in *such service* and before the expiration of 120 days from and after such publication, becomes or has become permanently and totally disabled * * * without having applied for insurance, shall be deemed to have applied for and to have been granted insurance. * * *"

In the case of

Nieves v. United States, 160 F. (2d) 111 (1947, CCA Dist. Col.),

claim was filed on behalf of an ex-soldier who enlisted in the Army February 26, 1915, became permanently disabled February 13, 1917, and was discharged from the Army April 12, 1917. Claimant contended that, in accordance with the plain language of the statute, he was "in

the *active service* on or after the 6th day of April, 1917'' as well as prior thereto; that admittedly he became totally and permanently disabled while in active service, and accordingly was entitled to automatic coverage. The claimant's interpretation depended upon relating ''while in such service'' back to the isolated phrase ''active service,'' similar to that which appellant would do in relating the phrase ''such property'' back to the isolated words ''property, real and personal.'' By so doing, claimant came within the statute. The Court held, however, that the word ''such'' could relate back only to the entire phrase ''in the active service on or after the 6th day of April * * *'' and accordingly as claimant had not suffered the disability after the 6th day of April, even though it was suffered in active service, he was not covered by the statute. The Court's opinion in this regard is as follows:

> ''The word 'such' is restrictive in its effect and obviously relates to an antecedent. In its context here, it refers to a specific kind of service—not just any active service—previously mentioned in the statute. The only service mentioned in the Act before the use of the word 'such' is 'active service on or after the sixth day of April, nineteen hundred and seventeen.' ''

2. The phrase ''property in transit'' in insurance terminology relates to things carried, but not to the vehicle of carriage.

As the LAHAINA is admittedly not ''property situated in the United States,'' Matson must necessarily bring its loss within the language ''property in transit.'' That phrase is not ordinary, usual or every-day language. Its ''plain meaning'' must be derived from its setting. Its setting is in a statute dealing exclusively with the subject

of insurance, and, with respect to the phrase itself, in a clause relating to marine insurance. The phrase has a definite and universal meaning in insurance. As so interpreted, the language "property in transit" relates to cargo and articles transported or carried, but not to the conveyance.

The familiar precept of statutory construction that words, having both a popular and a business meaning, when used in a statute dealing with such business, are presumed to have been used in the meaning as understood in that business,[22] was adopted and used by this court in

> *Carter v. Liquid Carbonic Pacific Corp.* (1938 CCA 9) 97 F. (2d) 1.

A tax was levied against the sale of carbonic acid gas for use in making beer. The tax was properly assessed if beer was a "carbonated beverage." It was conceded that carbonic acid gas was used in beer and, after referring to dictionaries and reference books indicating that beer is a "carbonated beverage" within the popular meaning of that term, this Honorable Court nevertheless concluded that beer is not a "carbonated beverage" within the meaning of the revenue statute, as, in accordance with testimony produced at the trial, beer is not considered a "carbonated beverage" in the beverage trade. The opinion states, page 3:

> "At the trial the appellee produced five witnesses, all of whom were qualified as experienced either in the manufacture of beer or of soft drinks. These witnesses testified that the word 'beer' has a *definite meaning* in the beverage trade as does the term 'car-

[22]See 50 Am. Jur. 438; 2 *Sutherland Statutory Construction,* 3d Ed., Sec. 4919, p. 437.

bonated beverages'; that the term 'carbonated beverages' in trade usage does not include 'beer.' No evidence contradictory to that just summarized was introduced.

"Since we are dealing with a tax which is directed at a particular industry, this definite proof of a trade usage as to the term 'carbonated beverages' calls into application the familiar rule that commercial and trade terms having a uniform and definite meaning in commerce and trade will be interpreted accordingly.

The Supreme Court in

O'Hara v. Luckenbach Steamship Co. (1926), 269 U. S. 364, 46 S. Ct. 157, 70 L. Ed. 313,

in interpreting the words "divided into * * * watches" as used in the Seaman's Act of 1915, said, p. 316:

"In this conclusion we are fortified by the consideration that the legislation deals with seamen and the merchant marine and, consequently, the phrase 'divided into * * * watches' is to be given the meaning which it had acquired in the language and usages of the trade to which the act relates, * * *"

The rule that the language of statutes which are concerned with a particular business should be interpreted in accordance with the meaning given to the terms by men engaged in the business was also adopted in

Travelers' Equitable Ins. Co. v. Commissioner of Internal Revenue, 22 B. T. A. 784,

and in

Massachusetts Protective Ass'n. v. United States (1940, C. C. A. 1), 114 F. (2d) 304,

in interpreting the term "unearned premium," used in the Internal Revenue Code in accordance with the meaning

given the term by the testimony of insurance experts. The First Circuit Court of Appeals said,

> "* * * And where the applicable section deals with a particular trade or business, as insurance, the technical insurance terms must be considered to be used in the sense in which such terms are generally used or understood in the insurance business * * *"

Section 5(g) of the R. F. C. Act is an insurance statute. It was originally proposed by Mr. Jesse Jones, the Federal Loan Administrator, after consultation with insurance executives (Sen. Com. Hearings, 7; House Com. Hearings, 19). The War Damage Corporation was originally formed as "War Insurance Corporation." Insurance executives were in consultation with the Federal Loan Administrator while the bill was before Congress for discussion (Sen. Com. Hearings, 8, 73). The bill was initially drawn "* * * with the distinct purpose of being able to employ the insurance companies * * *" (Sen Com. Hearings, 71). Insurance representatives testified at the hearings (Sen. Com. Hearings, 52; House Com. Hearings, 38). The British War Damage Insurance program was studied in committee (Sen. Com. Hearings, 73). The statute authorizes and contemplates the issuance of insurance policies and insurance executives were regularly and systematically consulted in its administration (Tr. 326, 327).

"In transit" is language in general usage in the insurance business, and being employed in a statute dealing with insurance, under the authorities above referred to takes the meaning recognized in the business. Representative Ploeser, in referring to a provision originally placed in the House version of the bill giving free insurance to a limit of $15,000, stated:

> "The language is very ambiguous, but I thought it would be *interpreted in accordance with normal insurance practice.*" (88 Cong. Rec. Perm. Ed. 1848.)

This statement is indicative of the treatment to be given the entire Statute.

While the District Judge was of the opinion that the testimony of insurance men was of little value in his determination of the meaning of the Statute, it is apparent from his decision that he considered it clear that "property in transit" does not include the carrying vessel, without the necessity of resorting to the testimony of the experts. We believe, however, that this testimony is of compelling force in assisting the court in determining the meaning of the statutory language and in demonstrating the reasonableness of the administrative determination by the War Damage Corporation in not providing protection for ships.

Leading underwriters of New York and San Francisco testified that the words "in transit" are universally understood in the insurance world to have the meaning accorded them by War Damage Corporation.

Mr. Harold L. Wayne, President of Albert Wilcox & Co. of New York, who, at the time of his testimony, was manager of the Inland Marine Underwriters' Association and of the Inland Marine Insurance Bureau, stated that he had heard the term "in transit" used in connection with insurance all the years he had been in business and that the words were used to describe peril assumed by underwriters on goods while such goods were being transported but not the vehicle of carriage.

> "Q. Can you tell whether the terms 'in transit' are used in connection with insurance of a vehicle or ship?

A. Never unless the vehicle or the ship is to be transported on another vehicle from one place to another place, such for example as the transportation of a yacht or motor vessel from its place of manufacture to its seaport or place of sale." (Tr. 277).

He further said that this would hold true likewise of an airplane. (Tr. 277.)

Mr. Wayne's testimony carries particular force because he was fully familiar with the field of commercial war risk insurance during the war, set up the operations of the organization for the War Shipping Administration for clearing with the War Risk Re-insurance Exchange and was Marine Representative of the commercial companies committee for the War Damage Corporation (Tr. 279). Mr. Wayne helped prepare insurance forms for the War Damage Corporation which itself issued "in transit" policies. Those policies never covered the hulls of ships or any vehicles (Tr. 282).

Mr. M. M. Pease, who had 30 years experience in the marine insurance business and was American Manager of the British & Foreign Insurance Company, similarly testified that he had never heard of ships on a voyage spoken of as "in transit" but that this term was used to designate goods that a ship carries (Tr. 265, 266).

Howard W. Cann, Manager of the Railroad Insurance Association, a combination of fourteen insurance companies insuring properties and liabilities of railroads for various perils, confirmed that the words "in transit" were not used in connection with transporting vehicles but only with respect to things carried. He knew of no conveyances that are insured as "in transit," testifying:

"Q. Can you tell us whether those terms are used in connection with the insurance of rolling stock?

A. Not generally; only in one specific case that I can think of.

Q. What is that case?

A. At the present time practically all railroads of the country are changing from steam power to Diesel power. When a Diesel locomotive is purchased and delivered to the purchasing railroad that locomotive may travel on its own wheels over tracks, but not under its own power, being drawn in a train with other cars and under a bill of lading just the same as any other merchandise in transit. That is all I can think of.

Q. That is the only time, when a locomotive would be regarded as property in transit, when it is not under its own power, but when it is being conveyed, is that right?

A. That is correct.

Q. Are trains in operation insured as property in transit?

A. No."

Mr. Fred Galbraith, Pacific Manager of the Marine Office of America, who had served as a director of the Board of Marine Underwriters of San Francisco, stated:

"Q. Are the terms 'in transit' used in connection with the insurance of the hull of the ship?

A. No." (Tr. 146).

The same usage was established by Mr. A. B. Knowles, President of A. B. Knowles & Co., marine general agents at San Francisco, and former President of the San Francisco Board of Marine Underwriters, and by Mr. George Inselman (Tr. 249) of the Marine Office of America, New York.

Surely, if testimony of these executives in the insurance world was incorrect or too positive in declaring that the

words "property in transit" in the parlance of the insurance business did not embrace a ship, other, experts would have been produced by our opponents. This was not done. Mr. Prentiss, a San Francisco insurance broker, the only one who testified in rebuttal on this point, merely stated that in the body of certain insurance policies the word "property" was used to refer to a ship, its tackle, apparel and equipment. He also agreed that referring to a ship as "in transit" was not an insurance expression but said that he would understand what was meant by the term (Tr. 181).

The other means by which appellant endeavored to counteract this clear and powerful testimony as to the meaning and use of "in transit" was through illustrations as to the occasional usage of "in transit" in non-insurance situations such as in a casualty report or in its peculiar use with respect to canals.

The testimony of these insurance experts as to the meaning of the language "property in transit" used in the Statute, is in exact harmony with the meaning which the legislative history shows should be attributed to the language. It would be manifest error to accept appellant's assertion that the "plain language of the Statute" includes ships.

I. Resort to legislative materials in interpreting the Statute is proper.

Thus the language employed in the Statute and the legislative history, both with respect to the general purpose and objects to be attained by the Statute and also with respect to the specific language "property in transit," exclude the loss of the LAHAINA.

Appellant argues, to the contrary, that the language of the Statute is unambiguous and therefore it is improper to resort to legislative history for interpretation, except to the extent that it may be used as a guide to the general policy of the Statute.[23] But under the decisions upon which appellant relies, even if statutory language appears to be clear and unambiguous, the legislative history *is* resorted to to ascertain whether the literal meaning was intended.

In,

Jones v. Liberty Glass Company (1947), 332 U. S. 524, 92 L. Ed. Adv. Op. 195, 68 S. Ct. 229 (Op. Br. 8),

the Court resorted to the legislative history, saying:

"That this ordinary meaning is one intended by the authors of Sec. 322(b)(1) is quite evident from the legislative history which we have detailed. * * *" (p. 199).

The same may be said of the case of

Browder v. U. S. (1941), 312 U. S. 335, 85 L. Ed. 862, 61 S. Ct. 599 (Op. Br. 8).

Although in

Helvering v. City Bank Co. (1935), 296 U. S. 85, 80 L. Ed. 62, 56 S. Ct. 70 (Op. Br. 18),

the Court *says* it is not at liberty to resort to committee reports to construe plain language, the fact is, as shown from the opinion, the Court did examine committee reports although it did not follow them. And in

United States v. Mo. Pac. R.R. (1928), 278 U. S. 269, 73 L. Ed. 322, 49 S. Ct. 133 (Op. Br. 19),

---

[23]We agree that legislative history may *also* be used as a guide to general policy but we assert that it may be used equally to interpret the language of the Statute.

the Court examined the legislative history but found that "appellants' construction is not supported by the legislative history."

The majority in

Packard Company v. Labor Board (1947), 330 U. S. 485, 91 L. Ed. 1040, 67 S. Ct. 789 (Op. Br. 18),

a five to four decision,[24] did refuse to examine the legislative materials as it considered the word "employee" unambiguous and applicable to foremen. The minority had no hesitation in doing so, saying:

> "When we turn from the act to the legislative history, we find no trace of congressional concern with the problems of supervisory personnel. * * *" (p. 1054).

While we do not concede appellant's premise as to the "plain meaning" of the Statute, it is settled that the legislative history may be and should be examined and used by the courts whenever it will be of assistance in determining the intent with which and the purposes for which the legislators employed the particular language and consequently the meaning thereof and that this should be done irrespective of "how clear the words may appear on superficial examination." In doing so courts not infrequently find that general language used by the legislators was intended to have a restrictive meaning.

There is abundant support for this rule in decisions of highest authority:

In

U. S. v. American Trucking Association (1940), 310 U. S. 534, 84 L. Ed. 1345, 60 S. Ct. 1059,

---

[24]The dissenting opinion of Mr. Justice Douglas was concurred in by Chief Justice Vinson and Mr. Justice Burton and, with respect to the part herein referred to by Mr. Justice Frankfurter.

the Supreme Court, on careful examination of the legislative history, adopted this principle in limiting the word "employees" in the Motor Carrier Act to employees whose activities affect the safety and operation of the vehicles. Appellant has quoted a portion of the court's rules for interpretation of the language of a statute on page 20 of its brief. While we are not in disagreement with the rule quoted by appellant, we believe that the essence of the principle applied by the Court requires quotation of the paragraph immediately preceding and the sentence immediately following the quotation taken by appellant:

> "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the *intent* of Congress. There is no invariable rule for the discovery of that intention. *To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen* of a statute, particularly in a law drawn to meet many needs of a major occupation (p. 1350).
>
> * * * * * * *
>
> "* * * When aid to construction of the meaning of words, as used in the statute, is available, *there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on superficial examination.'* * * *" (p. 1351).

In

U. S. v. Dickerson (1940), 310 U. S. 554, 84 L. Ed. 1356, 60 S. Ct. 1034 (Op. Br. 21),

the Court said, page 1362:

> "The respondent contends that the words of Sec. 402 are plain and unambiguous and that other aids

to construction may not be utilized. It is sufficient answer to deny that such words when used in an appropriation bill are words of art or have a settled meaning. See United States v. Perry, 50 F 743, 748 (CCA 8th). The very legislative materials which respondent would exclude refute his assumption. *It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words.* Legislative materials may be without probative value, or contradictory, or ambiguous, it is true, and in such cases it will not be permitted to *control* the customary meaning of words or overcome rules of syntax or construction found by experience to be workable; they can scarcely be deemed to be incompetent or irrelevant. See Boston Sand & Gravel Co. v. United States, supra (278 US at 48, 73 L ed 177, 49 S Ct 52). *The meaning to be ascribed to an Act of Congress can only be derived from a considered weighing of every relevant aid to construction.* These lead to the conclusion that the judgment of the court below must be reversed."

Harrison v. Northern Trust Company, 317 U. S. 476, 87 L. Ed. 407, 63 S. Ct. 361 (Op. Br. 18), is another example of the Supreme Court's resort to legislative history to interpret the wording of a statute irrespective of the apparent clarity of the statute. The Court, in reversing, said of the Circuit Court's decision:

"In so doing the court below refused to examine the legislative history of Sec. 807 on the ground that the section was unambiguous.

"*But words are inexact tools at best and for that reason there is wisely no rule of law forbidding re-*

*sort to explanatory legislative history no matter how 'clear the words may appear on superficial examination.' * * *''* (pp. 410-411).

U. S. v. Carbone (1946), 327 U. S. 633, 90 L. Ed. 904, 66 S. Ct. 734,

illustrates the accepted tenent of statutory construction that despite plain, general and seemingly all-inclusive language in a statute, the legislative history may be examined to interpret that language in accordance with the intent and purpose of the statute. The Court had before it the interpretation of the *Kickback Act,* 40 U.S.C.A. 276(b) which provided, in part:

> "*Whoever* shall induce any person employed in the construction * * * to give up any part of the compensation * * * by force, intimidation * * * or by *any manner whatsoever,* shall be fined not more than $5,000 * * *"

Although the activities of a union agent fell squarely within the language of the statute, the Court determined from the legislative history that Congress did not intend to include union agents and union action and stated:

> "* * * not every person or act falling within the literal sweep of the language of the Kick-Back Act necessarily comes within its intent and purpose. That language must be read and applied in light of the evils which gave rise to the statute and the aims which the proponents sought to achieve. The interpretative process would be abused and the legislative will subverted were we to deal with the broad language of this statute in disregard of the narrow problem of kickbacks which Congress sought to remedy."

From this review of decisions this Court should have no hesitation in resorting to the legislative history of the War Damage Corporation Statute, both for purposes of determining its general purpose and of interpreting specific language. In doing so, we believe this Court will find that the conclusion reached by the District Court is inescapable.

II. LOSSES OF THE TYPE APPELLANT HAS SUFFERED WERE VALIDLY EXCEPTED BY THE WAR DAMAGE CORPORATION.

A. Statement of applicable exception.

Appellant's loss of the LAHAINA falls directly within a class of property excepted by War Damage Corporation in accordance with express statutory authority. The appellant therefore has no right to recover.[25]

Subsection (b), the free protection section, is expressly made subject to the authorizations and limitations of subsection (a) which includes the authorization to War Damage Corporation to provide protection for property real and personal "with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable." Pursuant to this specific statutory authority the Board of Directors of the War Damage Corporation on October 2, 1944 (approximately three months before plaintiff presented its claim)

---

[25]Appellant states that this defense was "disregarded" and "ignored" by the trial court (Op. Br. 8, 56). The District Court said "If defendant's interpretation of the statute was correct [the Court held that it was] it obviously acted properly in denying plaintiff's claim and the issue as to the scope of its statutory power to make general exceptions from coverage of certain property becomes irrelevant" (Tr. 66).

adopted a resolution (Tr., 368 to 374) which excepted from protection (among numerous types of property):

"All vessels and watercraft wherever situated (and their tackle, apparel, fittings, equipment, stores, ordnance, boilers and machinery)," other than vessels used for storage or housing, or vessels under construction, or laid up pleasure craft.[26]

The exception is made expressly applicable to *all* of Section 5(g); that is, to both the paid and the free protection. Mr. R. C. Goodale, General Counsel of the War Damage Corporation, testified:

> "The Resolution was almost wholly declaratory of a practice that had existed from the commencement of the activity of the Corporation. Its purpose was mainly to place of record and formalize the action we had already carried into effect in the actual day-to-day administration of the Act." (Tr. 323.)

In the District Court, appellant sought to avoid the clear-cut defense of the resolution by asserting that the "general exceptions" were limited to area or geographical exceptions and that an interpretation which would authorize the making of exceptions to types of property would invalidate the statute as an unconstitutional delegation of legislative authority.

---

[26]Much was sought to be made in the District Court of the allegedly illogical position of War Damage Corporation in (1) asserting that ships were not covered by the statute, and (2) acting to except ships from its protection. The answer to this contention is, of course, that appellee in adopting the Resolution making general exceptions was merely clarifying its position and setting at rest any doubts which uninformed claimants might have as to the scope of the statute.

B. The "General Exceptions" clause relates to exceptions as to types of property.

The answer to the assertion that the general exceptions clause is limited to exceptions to areas is found in the language of the statute itself, which at a later point expressly delegates to War Damage Corporation the specific authority to make geographical exceptions. Surely Congress would not use the general language of the exceptions clause for the sole purpose of conveying authority covered by a specific provision. This is borne out by the history of the development of the statute.

In support of appellant's contention, counsel quoted from Senate Report No. 1012 prepared by Senator Maloney, which, in referring to the general exceptions clause of the Senate Bill, states that the provision was added by the committee "to permit the corporation to suspend consideration of the problem as to areas in which enemy occupation or other factors make it temporarily impossible to ascertain the situation." This report was made February 2nd, the same day the hearings in the House Committee commenced. The House Committee used as the basis for its discussion the bill reported out of the Senate, but the bill later reported out of the House omitted the Senate's general exceptions clause, although it did have a clause permitting exceptions as to areas, as follows:

> "War Damage Corporation, with the approval of the Federal Loan Administrator, may suspend, restrict, or otherwise limit the provision of such protection in any area as it may determine necessary or advisable in consideration of the loss of control by the United States or other factors making it impossible or impracticable to provide such protection therein." (House Report, p. 2.)

The similarity of this express provision in the House bill and of the statement of the reason for the Senate's general exception clause quoted by appellant from the Senate report is so striking as to leave no doubt as to the origin of the House provision. The House obviously adopted as part of its bill the *reason* given by the Senate report for the Senate's general exceptions clause, rather than to adopt the clause itself.

If all that was ultimately to be intended by the general exceptions clause was an exception for such areas as the United States may lose control of, the simple procedure for the conference committee should have been to include the specific statement to that effect in the House bill and strike out the "general exceptions" clause of the Senate bill. They did the former, but not the latter, thus making it obvious that *the general exceptions clause in the bill as finally passed not only was not limited to area exceptions, but, in fact, no longer referred to areas.*

As previously pointed out, exceptions as to the type of property to be covered were indigenous to the entire scheme originating with the press releases which enumerated specific exceptions. It is apparent throughout that it was the intention that the War Damage Corporation would fill in the details,[27] including the classes of property to be covered. Senator Taft, when the bill was up for consideration on the floor of the Senate following the Committee Report, presented an extended discussion, concluding with:

> "Mr. President, I feel that we should pass the bill. The whole question of insurance is so complicated, the details are so countless, and there are so many

[27]Sen. Com. Hearings, 72, 91, 93; House Com. Hearings, 45, 51.

things to be considered that I do not object to leaving it to the War Damage Corporation, after we lay down the general principle, to work out the complicated details." (88 Cong. Rec. Perm. Ed. 964.)

Both the bills reported out of the House and the Senate committees limited the type of property which the War Damage Corporation was authorized to protect to "tangible" property. Appellant contended in the trial court that the elimination of the word "tangible" acted as a rebuff to the Federal Loan Administrator's exceptions contained in the press releases since those exceptions were largely of intangibles. On the contrary, the process by which the word "tangible" was eliminated is a striking illustration of the fact that it was always contemplated that the War Damage Corporation would determine types of property to be covered and not to be covered.

The limitation to tangibles was abandoned by an amendment introduced from the floor of the House at the time the committee bill was being considered. This amendment was introduced by Mr. Spence, a member of the House Committee. He and other members of the House entertained no doubt but that this amendment was for the purpose of broadening the power of the War Damage Corporation to determine the types of property to be covered. Following the introduction of the amendment, the following discussion occurred:

"Mr. Rolph. As I understand the gentleman's amendment, it would take care of those risks I interrogated the Chairman about earlier this afternoon.

Mr. Spence. All of those risks may be taken care of subject to rules and regulations of the War Damage Corporation.

Mr. Rolph. Tangible and intangible?

Mr. Spence. If they want to include them by rules and regulations they can include the risks the gentleman mentions. *It is all up to the Corporation what they desire to do,* and in the passage of this amendment you do not tie their hands, but you let them operate as they judge to be the best interests of the American people." (88 Cong. Rec. Perm. Ed. 1859.)

The statement that "It is all up to the Corporation * * * " with respect to inclusion of intangibles refutes appellant's claim that all exceptions were intended to relate only to areas. Mr. Spence also read into the record at the same time a statement by Mr. Claude Hamilton, General Counsel for Reconstruction Finance Corporation, active in preparing and promulgating the statute, in which Mr. Hamilton stated, in part:

"It seems appropriate, then, to permit the Administrator to establish the various classifications of property to be covered as necessity and experience may require or permit. * * *"

* * * * * * *

"It may, admittedly, prove infeasible to provide any protection for some classes of property. That is left to the discretion of the Administrator. It is the purpose of this amendment merely to prevent the preclusion of any single class of property from such benefits. (88 Cong. Rec. Perm. Ed. 1860.)

Analysis of the final statutory language itself makes it clear that the "general exceptions" clause refers directly to types of property. The only items preceding the "general exceptions" clause and to which it could have reference are (1) "property, real and personal" and (2)

"which may result from enemy attack." As the latter was the whole object of the Act, "general exceptions" refers to "Property, real and personal."

The foregoing eliminates any doubts as to whether War Damage Corporation was authorized to promulgate general exceptions as to types of property. That the exceptions with respect to vessels, as set forth in the resolution of the Corporation, were reasonable and consonant with the language and purposes of the statute and supported by the legislative history, is amply shown by the materials contained in Section I of this brief.

C. Authorization to War Damage Corporation to determine types of property to be covered does not constitute an unlawful delegation of legislative power.

Appellant further contended in the District Court that if the power to make general exceptions extended beyond area exceptions and included exceptions as to types of property, the statute constituted an unlawful delegation of legislative power to the administrative agency. If the statute were thus held to be unconstitutional, appellant would have no basis for recovery. It, accordingly, argues that the statute, to avoid unconstitutionality, should be construed as not authorizing any general exceptions except as to areas. The inconsistency of Matson's position is demonstrated by its conceding that the statute constitutionally authorizes exceptions to areas.

Appellant's position is based upon the decisions of the United States Supreme Court in the two N.I.R.A. cases:

Panama Refining Co. v. Ryan (1934), 293 U. S. 388, 79 L. Ed. 446, 55 S. Ct. 241; and

Schechter Poultry Corp. v. U. S. (1935), 295 U. S. 495, 79 L. Ed. 1570, 55 S. Ct. 837,

in which the Supreme Court, for the first, and it is believed the only time, held a Federal statute invalid on the grounds of unconstitutional delegation of legislative authority. In both cases the question of imposition of penal provisions of the N.I.R.A. statutes by an administrative agency was involved and the Court determined that inadequate standards, under the circumstances, had been set up, upon which the administrative agency was to act. In the ten years following the decision in the *Ryan* case, the Court came to a realization of the utter impracticability of Congress going into detail with respect to the administration of statutes setting up governmental agencies and activities and in the two O.P.A. cases:

Bowles v. Willingham (1944), 321 U. S. 503, 64 S. Ct. 641, 88 L. Ed. 892; and

Yakus v. United States (1944), 321 U. S. 414, 64 S. Ct. 660, 88 L. Ed. 835,

upheld, against an attack of unlawful delegation of legislative authority, the O.P.A. Act. The only standards provided for the determination of regulations as to commodity prices dealt with in the *Yakus* case was that they should be, in the judgment of the Administrator, "generally fair and equitable" and "effectuate the purposes of the Act." In the *Willingham* case, the Administrator was granted the power to fix maximum rents and the only standard prescribed for his action was that "in his judgment," they should be "generally fair and equitable."

The modern doctrine promulgated in these cases is concisely stated by the court in the *Willingham* case, page 903, as follows:

> "* * * Congress does not abdicate its functions *when it describes what job must be done, who must do it and what is the scope of his authority.* In our complex economy that indeed is the only way in which the legislative process can go forward. * * *"

Mr. Justice Roberts wrote a dissenting opinion in both of the O.P.A. cases, saying in the *Willingham* case, "Whether explicitly avowed or not, the present decision overrules that in the *A. L. A. Schechter Poultry Corp.* case" (p. 917). In his dissent in the *Yakus* case he said that a comparison of the standards under the N.I.R.A. and O.P.A. read in light of what was said in the *Schechter* case, "leaves no doubt that the decision is now overruled" (p. 863). This is significant in view of appellant's reliance on the *Schechter* case.

A new and more liberal principle that of seeking standards outside the language of the statutes in the customs and practices of the commercial world, was injected into the doctrine of delegation of legislative authority by the decision of the Supreme Court in

> *Fahey v. Mallonee* (1947), 332 U. S. 245, 91 L. Ed. 2030, 67 S. Ct. 1552.

The Supreme Court unanimously reversed a decision of a three judge court sitting in Los Angeles which, on the express authority of the *Ryan* and *Schechter* cases, had held that Section 5(d) of the Home Owners Loan Act constituted an unlawful delegation of authority to the Federal Home Loan Bank Board in giving that Board full power to appoint a Conservator or receiver to take over Federal Savings & Loan Associations.

The Court distinguished and limited the *Ryan* and *Schechter* cases by saying:

"Both cited cases dealt with delegation of a power to make federal crimes of acts that never had been such before and to devise novel rules of law in a field in which there had been no settled law or custom."

It then proceeded to point out that the Home Owners Loan Act did not deal broadly with all industry as did the *Schechter* case, did not set up penal provisions or establish new federal crimes and that, although there were no explicit or specific standards stated in the statute for the Board's action (a requirement of the N.I.R.A. cases), the authorization to make regulations with respect to appointment of a Conservator must be viewed in light of the established background of corporate management and banking practice, which, itself, provides the standards.

The Court said further:

"* * * But the provisions of the statute under attack are not penal provisions * * *. They do not deal with unprecedented economic problems of varied industries. They deal with a single type of enterprise and with the problems of insecurity and mismanagement which are as old as banking enterprise. * * * *Banking* is one of the longest regulated and most closely supervised of public callings. It is one in which accumulated experience of supervisors, acting for many states under various statutes, *has established well-defined practices for the appointment of conservators, receivers and liquidators. Corporate management* is a field, too, in which courts have experience and many precedents have crystallized into well-known and generally acceptable standards. *A discretion to make regulations to guide supervisory action in such mat-*

ters may be constitutionally permissible while it might not be allowable to authorize creation of new crimes in uncharted fields'' (p. 2037).

The War Damage Corporation Statute, like the Home Owners Loan Act, does not create or authorize the creation of federal crimes nor is it concerned with penal provisions as in the *Ryan* case. It does not, as in the *Schechter* case, deal broadly with all industry, but is narrowed to insurance for damage resulting from enemy attack.

Although the War Damage Act contains adequate express standards to guide the Corporation in making its rules, regulations and exceptions, such as ''reasonable protection'' and to ''establish uniform rates'' and ''estimate the average risk of loss'' in addition to territorial limitations, and the statutory standard of ''necessary to expedite the national defense program'' contained in section 5-d (15 U.S.C.A. 606b-3) of the Reconstruction Finance Corporation Act under which War Damage Corporation was formed, under authority of the decision in *Fahey v. Mallonee,* such express statutory standards are unnecessary. The standards for the action of the War Damage Corporation may be found in the customs and practice of the insurance business with respect to the coverage to be offered, which practices are as long standing and as adequate as the external practices of the banking business relied upon by the Court for the Housing Board's appointment of a Conservator. Furthermore, the authority to adopt rules, regulations and make general exceptions was placed in a corporation which is, as the Court points out in *Fahey v. Mallonee,* subject to ''generally acceptable standards'' of corporate management.

While we do not believe the *Ryan* and *Schechter* cases require a holding that the power to make general exceptions with respect to property is unconstitutional, it is apparent the decisions of the Supreme Court since the N.I.R.A. cases completely set at rest any doubt which there might have been concerning the constitutionality of War Damage Corporation's construction that the "general exceptions" clause lawfully authorizes exceptions as to classes of property.

III. THE FREE PROTECTION SECTION OF THE STATUTE IS PERMISSIVE AND NOT MANDATORY. PLAINTIFF HAS NO REMEDY IN THE COURTS.

Irrespective of the interpretation of the meaning of "property-in-transit" or of the exception of vessels pursuant to the "general exceptions" clause, appellant is not entitled to a judgment because while War Damage Corporation is *authorized* to provide free protection for property within the scope of the statute it is not *required* to do so and hence judgment compelling it to do so would be improper.[28]

A. Use of the word "may" in subsection (b) requires permissive construction.

It is by virtue of subsection (b) of Section 5-g that Matson Navigation Company is seeking a judgment to compel War Damage Corporation to pay $615,000 for

---

[28]Appellee took this position in the District Court. Appellant erroneously (Op. Br. 11) states that it was "disregarded by the Trial Court." However the Trial Court, having determined that appellant's loss was not included in the meaning of the statute, considered it unnecessary to make a determination with respect to the other issues (Tr. 67).

loss of the S.S. LAHAINA. In subsection (b) of Section 5-g, words of compulsion are strikingly lacking:

> "(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), *may* be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage *may* be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage."

War Damage Corporation is simply permitted to provide compensation under the terms specified. This was logical as the corporation had already undertaken to provide the free protection without special sanction of Congress. Through subsection (b) Congress in effect said, "You are permitted to continue what you have already undertaken."

The word "*may*" is used in subsection (b). "The ordinary meaning of language must be presumed to be intended unless it manifestly defeats the object of the provision."

> *United States v. Thoman* (1895), 156 U. S. 353, 39 L. Ed. 450, 15 S. Ct. 378.

The ordinary meaning of "may" is permissive and not mandatory. The statute leaves it to the discretion of the War Damage Corporation, the governmental agency empowered to administer the Act, subject to the authorization and limitations of subsection (a) of the statute, to provide the free protection. There is no reason to sup-

pose Congress intended any other meaning of "may" in subsection (b). Careful analysis of (a) and (b) discloses a studious and discriminating choice of the permissive "may" and the mandatory "shall."

Section 5-g(a) is essentially mandatory. The word "shall" is used nine times in prescribing a clear duty to establish and maintain an insurance program on a premium basis. Section 5-g(b), on the other hand, providing free protection, does not once employ "shall" or any other mandatory language. The statutory language further demonstrates that Congress used permissive and mandatory words in their usual sense. It used permissive words where it did not require that the action be taken, but where it intended an absolute duty, mandatory words were used. Hence, the statute *"directed"* the R. F. C. to continue to supply funds to War Damage Corporation. It intended no alternative. It required the R. F. C. to empower War Damage Corporation to use its funds in the manner specified, by stating *"is authorized to and shall"* but in the same sentence permitted or authorized but did not require War Damage Corporation to make exceptions by using the phrase *"may* deem advisable." It permitted War Damage Corporation to make terms and conditions (*"may* establish"), but in the same sentence requires that the protection be made available by July 1 (*shall* be made available) and that uniform rates be determined ("shall from time to time"). It prescribes absolute territorial limitations by stating, "such protection *shall* be applicable only * * *," but at the same time by use of the word "may", authorizes, permits, or empowers War Damage Corporation to exercise its discretion to suspend, re-

strict, or limit protection to certain areas in which the United States may lose control.

With such a careful selection of mandatory and permissive words used in their ordinary and natural sense in close juxtaposition throughout the statute, there can be no doubt that when "may" is used in subsection (b), it is used in its ordinary sense of permission.

Subsection (b) had its origin in the comparable "free protection" provision of the House Bill with respect to losses prior to July 1, 1942. The Statement of the Managers on the Part of the House, embodied in the Conference Report, utilizing the permissive word "might" in its explanation of subsection (b) effectively answers any contention that "may" was inadvertently used in the statute.

> "* * * The House amendment also provided that any such loss or damage sustained prior to the approval of the act or prior to a date determined by the Secretary of Commerce (not later than July 1, 1942) *might* be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of a premium or other charge." (Cong. Rep. 5.)

Matson contended in the District Court that "may" as used in the statute was mandatory, except that the statute permissively allows area or territorial exceptions. In support of this contention, appellant argued that the use of "may" in subsection (b) had its origin in the Senate Committee Hearings from a remark made by Mr. Claude Hamilton, General Counsel for the R. F. C., at the time Senator Danaher was proposing to inject into the bill a

provision, relative to the premium program, which would act prospectively to give free protection up to $15,000 above which figure a premium would be charged. The words which Senator Danaher was suggesting were:

> "Such protection to the limit of $15,000 for loss of or damage to such property of any one owner *shall* be provided without payment of premium or other charge by such owner." (Sen. Com. Hearings, 90.)

and

> "Such protection in amounts greater than $15,000 *shall* be made available * * * upon payment of * * * premium."

Mr. Hamilton stated: "Suppose we change 'shall' to 'may' ".

> "Senator Danaher. Then you do not give automatic coverage.
>
> Mr. Hamilton. That is right. That is a matter we think should be left to regulation, because you may have areas where you would not want it to be mandatory." (Sen. Com. Hearings, 93).

The Senate Committee, after off-the-record discussion during recess, rejected Mr. Hamilton's suggestion and did not change "shall" to "may." The entire provision under discussion was omitted from the bill as finally passed.

It is hardly conceivable that the use of "may" in subsection (b) adopted by the Conference Committee from the House Bill could have its origin in a suggestion of Mr. Hamilton in the Senate Hearing which was rejected by the Senate Committee.

The quoted duologue does serve to demonstrate, however, that the legislators were cognizant of the difference between permissive "may" and mandatory "shall," and that the ultimate selection of "may" for the free protection section (b) was not inadvertent.

B. The Rule that "may" is mandatory in certain circumstances is inapplicable. The authorities support a permissive construction.

We recognize that, as asserted by Appellant in the District Court, courts have at times given words of authorization a mandatory construction when the authorization is to a public officer to perform a statutory function for the benefit of the public or a third person. But this, like other rules of statutory construction, is merely an aid in determining the true intent of the legislature. It is not available where, as here, the intent is manifest. This was aptly pointed out by Mr. Justice White in

United States v. Thoman (1895), 156 U. S. 353, 39 L. Ed. 450, 15 S. Ct. 378.

A statute first prescribed mandatory rules for the expenditure of money by municipal corporations, and then stated:

> "That any surplus of said revenue *may* be applied to the payment of the indebtedness of former years."

The Court, after first stating the rule to which the Appellant referred, rejects the rule saying:

> "But no general rule can be laid down upon the subject, further than that the exposition ought to be adopted in this as in other cases, which carries into effect the true intent and object of the legislature in

the enactment. The ordinary meaning of the language must be presumed to be intended unless it would manifestly defeat the object of the provisions.

In *Thompson v. Roe,* supra, this court, speaking through Mr. Justice Grier, observed: 'It is only where it is necessary to give effect to the clear policy and intention of the legislature that *such a liberty* can be taken with the plain words of the statute.'

In the law to be construed here it is evident that the word 'may' is used in special contradistinction to the word 'shall' and hence there can be no reason for 'taking such a liberty.' ''

The parallel between the statute considered by Mr. Justice White and Section 5-g is striking.

The construction of the section of the code which follows the War Damage Corporation statute by the Court in

General Cooling & Heating Corporation v. Reconstruction Finance Corporation (1945 D. C. Fla.), 59 F. Supp. 357, Aff'd C. C. A. 5, 152 F.(2d) 655,

furnishes an exact precedent. That statute, section 606b-3, known as the Murray-Patman Act, provides:

''In order to prevent and relieve distress among dealers in articles or commodities which are rationed * * * the Reconstruction Finance Corporation, * * * *is authorized* to purchase or make loans upon the security of any article or commodity the sale or distribution of which is rationed under authority of the United States, subject to the following terms and conditions;''

Plaintiff, who indisputably fell within the statutory category of a dealer distressed as result of commodity rationing, asserted that he could demand as a matter of right that the Reconstruction Finance Corporation purchase certain stoves from him. Reconstruction Finance Corporation said that the entire matter was left to its discretion. The Court held with the Reconstruction Finance Corporation:

> "The fundamental authority created by sec. 5h is permissive, not mandatory. Congress intended to invest R. F. C. with authority to act in these cases, but did not require it to act. * * * *The gist of the section, taken as a whole, is that R.F.C. is permissively 'authorized' to act,* * * *
>
> * * * * * * *
>
> "Also sec. 5h (a) (5), as originally introduced, provided that such purchases or loans 'shall' be made upon the request of any dealer, etc. * * * *Before enactment, this word 'shall' was changed to 'may' which further emphasizes the discretionary character of the Act"* (59 F. Supp. 359).

It is significant that this statute came before the same congressional committees, namely, Committee on Banking and Currency of each house, as did section 5(g), and at approximately the same time.

The Fifth Circuit affirmed the District Court's decision, stating, "We agree with the lower Court that the Murray-Patman Act, 15 U.S.C.A. Sec. 606b-3(a) merely authorized, but did not require, the Reconstruction Finance Corporation to make loans and purchases of rationed commodities."

In concluding this point,[28a] we say that if Congress desired to make subsection (b) mandatory, it well knew how to do so. On the contrary, Congress intended to and did leave to the sound (but not unbridled) discretion of War Damage Corporation when, how, and in what manner, "subject to the authorizations and limitations of subsection (a)," it would expend its funds in extending gratuity.

C. Appellant has no remedy in the courts.

Subsection (b) being but a permissive authorization to War Damage Corporation, gives no remedy by which appellant can obtain a judgment in its suit. A proper claimant under subsection (b) may have a right to resort to the courts to correct arbitrary or capricious action by the War Damage Corporation by Writ of Mandamus or its modern equivalent. But Matson Navigation Company neither seeks, nor is entitled to seek, such a remedy.

Furthermore, the amount of recovery, if any, under subsection (b) cannot be judicially determined as the statute authorizes War Damage Corporation to provide "reasonable protection." It was contemplated that the amount of benefits, whether gratuitous or for a premium, may be less than the full loss and that

---

[28a]Matson's counsel also made the contention that the word "may" in subsection (b) refers solely to the words:

> "without requiring a contract of insurance or the payment of premium or other charge * * *"

and that the War Damage Corporation has required neither. If this is the construction appellant would give to subsection (b), we are at a loss to find a verb which would even authorize, let alone require, defendant to pay for any losses occurring between December 6, 1941 and July 1, 1942.

> "* * * The amount of the benefit may be established at a percentage of the loss, the percentage to be fixed by the War Damage Corporation in line with experience and changing conditions. * * *" (Sen. Rep. 3).

The fact is that Congress did not write into the statute a standard of full market value as the measure of loss. Exercising its judgment authorized by the statute, War Damage Corporation in fact established a measure of loss of less than full value on certain classes of property which were covered. For loss of jewelry and furs, for example, a limitation of $1,000 was imposed (Tr. 330). On other property, cost, rather than full market value, was adopted as a standard of "reasonable protection" (Tr. 331). In one instance, the Corporation prescribed that in determining the amount paid, allowance should be made for tax deductions for benefits obtained by claimant by reason of the loss under the excess profits tax law (Tr. 332).

The only factual data in the record relating to the value of the LAHAINA is embodied in a stipulation that "her fair cash market value" at the time of her loss was $615,000 (Tr. 60). If ships had been within the purview of the Statute, War Damage Corporation might well have adopted some other standard, such as the lower standard of "just compensation" without enhancement by war conditions, which had previously been established by Congress in the Merchant Marine Act.[29]

These illustrations point to the error of asking a Court to assume the function delegated by Congress to the War

---

[29]46 U.S.C.A. 1242.

Damage Corporation to determine what should be "reasonable protection."

IV. APPELLANT'S LONG DELAY IN PROSECUTING ITS CLAIM CONSTITUTES A FURTHER BAR TO RECOVERY.

Subsection (b), the free protection section, provides that losses "may be adjusted as if a policy covering such property was in fact in force at the time of such damage." It is reasonable to assume that the policy to which the statute has reference is the standard policy issued by War Damage Corporation under the premium program. That policy provided that no suit may be maintained unless commenced within twelve months after date of loss (Tr. 39).

In addition to this provision of the policy, an administrative regulation of the War Damage Corporation in the form of a press release, issued December 30, 1942, provided that claims for loss of property in transit between December 6, 1941, and July 1, 1942, "should be filed with the Washington office of the War Damage Corporation on or before February 1, 1943" (Tr. 63).

Appellant failed to comply with either requirement as it first presented its claim nearly two years after the required date (Tr. 6) and did not bring suit until more than three years after the date of loss.

Appellant contended in the District Court that because War Damage Corporation's letter denying appel-

---

[30]The Federal Register Act did not permit publication in the Federal Register of such an announcement. 44 U.S.C.A., sec. 305a.

lants' claim did not refer to this "technical" defense, appellee waived such defense under the authority of *Oelbermann v. Toyo Kisen Kabushiki Kaisha* (CCA 9, 1925), 3 F. (2d) 5, cert. den. 268 U. S. 693, 69 L. Ed. 1161, 45 S. Ct. 511. The rule of that case was, however, expressly disapproved by a California court on the argument of Matson Navigation Company in *Hubbard v. Matson Navigation Company* (1939), 34 C. A. (2d) 475, 480, 93 P. (2d) 845, 1939 A.M.C. 1502, and under the authority of *Erie Railway Company v. Tompkins* (1937), 304 U. S. 64, 82 L. Ed. 1188, 58 S. Ct. 817, the rule of the *Hubbard* case and not the *Oelbermann* case should be followed.

On June 30, 1947, subsequent to the trial of this action, the 80th Congress enacted Public Law 132, Title II, Sec. 206 (x), (61 Stat. 209), expressly repealing the statute upon which appellants rely. The saving clause in Public Law 132, Title II, relates only to Reconstruction Finance Corporation, not to War Damage Corporation which alone ever had any authority to compensate for war losses and seems to us otherwise insufficient to preserve any right claimed by appellant under the repealed Act. We feel it our duty to bring this subsequent development to the Court's attention as it appears to us that irrespective of other issues in the case, the repeal of this statute eliminates the only basis upon which appellant has claimed the right to recover.

CONCLUSION.

For the reasons stated above we respectfully submit that the judgment of the District Court should be affirmed.

Dated, San Francisco, California,
October 1, 1948.

Respectfully submitted,
IRA S. LILLICK,
ALLAN E. CHARLES,
EDWARD D. RANSOM,
LILLICK, GEARY, OLSON, ADAMS & CHARLES,
Attorneys for Appellee,
War Damage Corporation.

(Appendix Follows.)

Appendix.

Appendix A

SECTION 5g OF RECONSTRUCTION FINANCE CORPORATION ACT AS ADDED, MARCH 27, 1942, 56 STATUTES AT LARGE 175, 15 USCA 606b-2.

Section 606b-2. Funds for War Damage Corporation; insurance against property injury by enemy attack.

(a) The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to section 5d of this Act; and the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this subsection. Such funds shall be supplied only upon the request of the Secretary of Commerce, with the approval of the President, and the aggregate amount of the funds so supplied shall not exceed $1,000,000,000. The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by

the Secretary of Commerce which shall not be later than July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico: *Provided,* That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United

States making it impossible or impracticable to provide such protection in such area.

(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such damage.

Approved, March 27, 1942.